

1. Discussion Objective:

Work Session Date:

To receive initial comments on the LDC Chapter 14
Fee Resolution (Beach Raking permits and Restricted
Beach Vehicles permits) in conjunction with
discussion and review of the proposed Beach Raking Ordinance

Monday March 19, 2012

2. Submitter of Information:

☐ Council
☒ Town Staff
☐ Town Attorney

3. Estimated Time for this item:

45 minutes for Beach Raking Ordinance and Fee Resolution



5. Background:

The Marine Resources Task Force began review of proposed changes to the beach raking and wrack line policy in March of 2009 and approved a final version to submit to LPA in Fall of 2010. The LPA conducted a public hearing in January of 2011 for the proposed changes and rejected with a vote of 6-0 and voted to send it back to Marine Resources Task Force (MRTF) for changes. MRTF reviewed the raking and wrack line policy in March and approved additional changes in April of 2011.

On November 8, 2011, the LPA voted 5-2 to recommend approval of the Beach Raking Ordinance, subject to amending the ordinance to allow holes at the wrack line to be filled with a tractor or mechanical equipment, and that the \$25.00 annual fee should not be charged to private property owners, replacing the term maintenance with the term grooming, and to require annual licensing. This draft resolution would adopt the \$25.00 annual fee, which will go into a fund for environmental education and restoration. Further, the draft fee resolution establishes a \$100 annual fee for Restricted Beach Vehicle Permits.

Attachment:

1. Draft LDC Chapter 14 Fee Resolution
2. Minutes of November 8, 2011 LPA Meeting & LPA Resolution
3. Proposed Beach Raking Ordinance
4. Staff report for Beach Raking Ordinance from November 8, 2011 LPA Meeting
5. Minutes of March 9, 2011 and April 13, 2011 MRTF meetings

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

RESOLUTION NUMBER 12-__

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS
BEACH, FLORIDA, ADOPTING A FEE SCHEDULE FOR CHAPTER 14, LAND
DEVELOPMENT CODE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise the power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, Section 34-53 of the Land Development Code (LDC) of the Town of Fort Myers Beach provides for the schedule of fees and charges for matters pertaining to Chapter 34; and

WHEREAS, the Town adopted a fee schedule for Chapter 34 applications in Resolution 07-04; and

WHEREAS, there currently is no fee associated with Chapter 14 applications, including Restricted Beach Vehicle permits and Beach Raking permits; and

WHEREAS, the text of the beach raking ordinance designated that the fees collected in conjunction with beach raking permits go towards environmental education and restoration projects; and

WHEREAS, it is also appropriate that the fees collected for Restricted Beach Vehicle permits go towards environmental education and restoration; and

WHEREAS, it is in the best interest of the health, safety, and welfare of the citizens of Fort Myers Beach to charge the fees set forth in this Resolution so that the provision of services by Town staff is revenue-neutral and paid by the applicants for such services as much as possible.

IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. Incorporation of Whereas Clauses. The above "Whereas" clauses are hereby incorporated by reference as though fully set forth herein.

Section 2. Reasonableness of Schedule of Fees and Charges. The Town finds that the Schedule of Fees and Charges which is attached hereto as Exhibit "A" is reasonable and its adoption by the Town is in the best interest of the life, safety, welfare and well-being of its citizens, residents, business owners and property owners.

Section 3. Best Interest of Town of Fort Myers Beach Environmental Fee Schedule. The Town finds that the adoption of the Schedule of Fees and Charges which is attached hereto as Exhibit "A" is in the best interest of the life, safety and well-being of its citizens, residents, business owners and property owners.

Section 4. Adoption of Town of Fort Myers Beach Environmental Fee Schedule. In accordance with the provisions of Chapter 14, the Town hereby adopts the Town of Fort Myers Beach Environmental Fee Schedule.

Section 5. Effective Date. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was adopted by the Town Council on (insert date) upon a motion by (insert Councilperson) and seconded by (insert Councilperson). Upon being put to a vote, the result was as follows:

Larry Kiker, Mayor	AYE/NAY	Bob Raymond, Vice Mayor	AYE/NAY
Joe Kosinski	AYE/NAY	Jo List	AYE/NAY
Alan Mandel	AYE/NAY		

DULY PASSED AND ADOPTED THIS (INSERT DATE), BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Larry Kiker, Mayor

By: _____
Michelle Mayher, Town Clerk

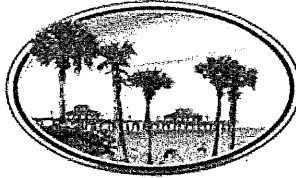
Approved as to legal sufficiency:

By: _____
Fowler White Boggs, Town Attorney

EXHIBIT "A"
TOWN OF FORT MYERS BEACH
ENVIRONMENTAL FEE SCHEDULE

<u>REVIEW ITEMS / FEE SCHEDULE</u>	<u>Environmental Fee*</u>
Administrative Actions	
Restricted Beach Vehicle permits	\$100/year
Beach Raking permit	\$25/year

* Per LDC Sec. 14-6(c)(9)f, all permit fees collected for mechanical beach raking permits shall be used only for environmental education and restoration. Restricted Beach Vehicle permits are being designated to be spent in the same manner.



MINUTES

**FORT MYERS BEACH
LOCAL PLANNING AGENCY
TOWN HALL – COUNCIL CHAMBERS
2523 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931**

November 8, 2011

I. CALL TO ORDER

Meeting was called to order at 9:02 a.m. by Joanne Shamp; other members present:

Alan Smith
John Kakatsch
Bill Van Duzer
Hank Zuba
Al Durrett
Jane Plummer

LPA Attorney, Marilyn Miller
Staff Present: Walter Fluegel, Community Development Director
Keith Laakkonen, Environmental Scientist

II. PLEDGE OF ALLEGIANCE

III. INVOCATION – Hank Zuba

IV. MINUTES

A. Minutes of October 11, 2011

Community Development Director Fluegel stated the minutes were not ready and would be presented to the LPA in December.

V. PUBLIC HEARINGS

A. Sign Ordinance, 11-10

Ms. Shamp opened the hearing at 9:06 a.m.
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Community Development Director Fluegel announced the Ordinance was posted.

LPA Attorney Miller read the title of the ordinance:

AN ORDINANCE AMENDING CHAPTER 30 – SIGNS IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; AMENDING SECTION 30-2, DEFINITIONS; SECTION 30-4, APPLICABILITY; SECTION 30-55 PERMITS AND INSPECTIONS; SECTION 30-91, COMPUTATION OF SIGN AREA; SECTION 30-92, MEASUREMENT OF SIGN HEIGHT; SECTION 30-152, DEVELOPMENT IDENTIFICATION SIGNS; SECTION 30-153, MAXIMUM SIGN AREA; SECTION 30-154, STANDARDS FOR CERTAIN TYPES OF SIGNS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Community Development Director Fluegel presented the proposed amendments for the recently adopted Sign Ordinance, and noted the December 31, 2011 deadline for sign compliance. He explained how staff had been working with many business and property owners regarding sign compliance and during that time identified several “glitches”. He discussed and summarized the proposed amendments:

- To provide a stronger definition for the term “monument sign”
- To provide a definition for the term “multiple-occupancy complex”
- To provide a stronger definition for the term “roof sign”
- To establish a simpler zoning review process for any change of sign copy, without requiring a full sign permit
- To eliminate the requirement for sign identification numbers and decals on permitted signs
- To provide clarification for off-site directional signage for schools, churches, daycare centers, parks, recreational facilities, and libraries
- To provide a more definitive means for establishing sign height
- To revise sign area calculation for wall signs, to the previously adopted method
- To clarify that only one monument sign per street frontage was allowed

LPA Attorney Miller reviewed a few of the other minor glitches (i.e. a provision that only permitted a ‘sign contractor’ to obtain a permit and install a sign, definition of sign height, multiple occupancy complexes).

Discussion was held regarding sign height and width; multiple occupancy complexes signage; and prior code interpretation of signage.

Public Comment opened.

No speakers.

Public Comment closed.

Ms. Plummer discussed how she toured up and down the beach and found 34 businesses that were not meeting the current signage guidelines, and then contacted Community Development Director Fluegel about the matter. She questioned which businesses were not required to meet these guidelines (i.e. for

historical purposes such as St. Peter's Church); and she inquired about a Town sign at Crescent Beach that appeared not to meet the sign criteria.

LPA Attorney Miller stated that sign in question at Crescent Beach was a County sign and the County was exempt.

Ms. Plummer suggested listing in some way and explaining for the public's benefit why there were signs that were exempt before December 31st. She discussed the importance of signage to a business.

Community Development Director Fluegel gave a historical overview of what staff had been working on since the adoption of the sign ordinance. He reported that some business/property owners have already begun their permit process and some have applied for a variance. He stated the Town began with approximately 140 signs and were now down to about 40 signs that were not in compliance. He explained what would happen to those signs not in compliance by December 31st.

Discussion was held regarding what would happen to property/business owners that were not in compliance after December 31st; exempt signage; and monument signs.

Mr. Van Duzer discussed uniform sign height or level which was the impetus for the sign ordinance. He noted his concerns regarding the requirement to move the signage three feet back from the right-of-way line.

Community Development Director Fluegel discussed the challenges he faced with the sign ordinance.

Mr. Zuba asked if staff had used any models when examining the 'glitches'.

Community Development Director Fluegel stated their work was more experience-based.

Discussion was held regarding the sign ordinance and the proposed amendments in a 'question and answer' format between the LPA and staff on the following points:

- Cost analysis for staff time and fees as it was related to enforcement, etc.
- Page 2 in the ordinance, exceptions and zoning review and 'aesthetic' review
- Page 3, paragraph 6 in the ordinance regarding multiple occupancy complex signage
- Page 3, paragraph c in the ordinance regarding monument signs
- The exempt County sign at Crescent Beach
- Page 1 in the ordinance regarding height and width
- Page 1, Section 30-55, paragraph 2(b) in the ordinance regarding zoning review for any change of copy – scrivener's error, change desire to desires
- Page 4, #12 regarding deletion of identification number
- Uniformity of copy, aesthetics
- Value of the signage as it related to property values
- Visual blight of Town and County signage
- Residential signage
- Signage and accidents at Santini Plaza

- Rights-of-way, monument signs, administrative latitude (i.e. Sea Grape Plaza)
- Page 5, Section 30-152(b) of the ordinance, consistency of wording

Ms. Shamp recapped the items noted during the discussion that the LPA may want to consider within their recommendations:

1. Regarding the 3' setback from the right-of-way line, or should it be a zero foot setback
2. Fees, revenue-neutral; should a new application be set at a slightly higher fee
3. Height; definition of a monument sign
4. Administrative variance
5. Reference back to the code for dimensions of directional signs
6. Review of public signs (i.e. Town and County signage)

MOTION: Mr. Van Duzer moved to approve that the LPA recommend to Town Council the approval of Ordinance 11-10; second by Mr. Zuba.

Ms. Shamp noted there was already one Proposed Findings of Facts and Conclusions of Law within their Resolution and there may be some modifications to the motion based upon the list of six items which could also be added to the Proposed Findings of Facts and Conclusions of Law.

Discussion ensued regarding the six items listed.

Ms. Shamp reviewed modifications to the motion based upon the previous discussion of the six items: *"we would add recommendations to what was already here, the motion was to approve with the first Findings of Fact and Conclusions of Law, and we also recommend approval for 1) monuments signs to be zero foot to street right-of-way, three feet to sidewalk of bike path; 2) we would leave in the monument definition of wider than it is high; 3) administrative variance discretion up to 10% with findings of hardship to meet code (LPA Attorney to determine wording); 4) directional signs would be four square feet basically and a maximum of four square feet; 5) recommendation that the Town review their signs"*.

Community Development Director Fluegel asked for clarification if the LPA wanted the Town to review their signage with respect to the number of signs or where there were conflicts of signs or the need.

Ms. Shamp stated for the need, the number, and the conflicts for the health, safety, and welfare of the Town. She re-stated the proposed recommended modifications to the motion: to include the first recommendation already included in the Resolution; that monuments signs would be zero foot to street right-of-way, three feet to sidewalk of bike path; to leave the monument definition of wider than it is high; to allow an administrative variance discretion up to 10% with findings of hardship to meet code (LPA Attorney to determine wording); that directional signs would be a maximum of four square feet; and to recommend the Town review their signs for need, number, and conflict.

AMENDMENT: Motion maker amended his motion to include the recommendations as stated by Ms. Shamp; second agreed.

VOTE: Motion approved, 7-0.

Public Hearing closed at 10:34 a.m.

Recess at 10:34 a.m. – Reconvened at 10:40 a.m.

B. Beach Raking Ordinance

Ms. Shamp opened the hearing at 10:41 a.m.

Community Development Director Fluegel announced the Ordinance was posted.

LPA Attorney Miller read the title of the ordinance:

AN ORDINANCE AMENDING CHAPTER 14 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE-ENVIRONMENT AND NATURAL RESOURCES; AMENDING SECTION 14-1, DEFINITIONS AND SECTION 14-6, BEACH RAKING AND WRACK LINE POLICY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Keith Laakkonen, Environmental Scientist Coordinator, noted that the LPA held a public hearing on this matter in January of this year when it was sent back to the Marine Resources Task Force (MRTF) for changes. He presented the summary, background, and analysis for the proposed changes to the beach raking and wrack line policy of the Land Development Code. He explained the changes were to clarify definitions, permit requirements, time of day and year raking may occur, enforcement, and insurance requirements in Chapter 14, Article I. He reported staff recommended approval of the changes.

Public Comment opened.

Bill Perry, beach groomer, explained when he appeared before the LPA on this item he did not support it; however, after working with MRTF and Town staff he now supported the proposed changes. He noted the importance of the education component. He questioned the filling of holes at the wrack line and explained why hand-filling of the holes would not work. He requested language included that stated the holes could be filled with a tractor. He noted his concern regarding other operators who did not have a permit from the Department of Environmental Protection for six or seven years; illegal requests from customers that he would not perform; and he requested from the Town professional operation of grooming of the beach by operators who were educated and had the proper license and insurance.

Public Comment closed.

Discussion ensued regarding whether or not permits were issued by the Town for beach grooming; ways of potentially issuing permits by the Town; annual issuance of permits; inspection of beach property by the Town and DEP after raking; conformity of standards for all vendors on the beach (i.e. insurance); private property rights; raking as maintenance or management of the beach; mechanical equipment to fill holes; permitting beach grooming vendors; and permitting of other vendors.

LPA Attorney Miller noted that on page 4, #7, it defined that a single permit may be issued to a business that conducts raking on multiple properties.

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Discussion ensued concerning permits to be obtained by grooming vendors; comments in the Staff Report; property rights; language in the proposed ordinance; proposed fees; the definition hand raking the wrack line; various liability issues; raking during the day versus night; and raking during turtle season.

MOTION: Mr. Van Duzer moved to approve that the LPA send Resolution 2011-XX to the Town Council with a recommendation for approval with two added items: 1) the wording of the holes at the wrack line should be able to be filled with a tractor or mechanical equipment; and 2) the \$25.00 annual fee should not be charged to private property owners, and if it needed to be adjusted only the business property owners; second by Mr. Kakatsch.

Mr. Zuba asked the Motion Maker to consider two additional items: 1) the use of the term grooming instead of maintenance in the ordinance; and 2) to require annual licensing.

AMENDMENT: Motion Maker amended the motion to include Mr. Zuba's two additional items; second agreed.

Discussion ensued regarding licensing; and the \$25.00 annual fee.

VOTE: Motion approved, 5-2; Ms. Shamp and Mr. Kakatsch dissenting.

Public Hearing closed at 11:48 a.m.

MOTION: Ms. Plummer moved to adjourn as the LPA and reconvene as the Historic Preservation Board; second by Mr. Smith.

VOTE: 7-0.

**ADJOURN AS LOCAL PLANNING AGENCY AND RECONVENE AS HISTORIC
PRESERVATION BOARD
11:49 A.M.**

VI. HISTORIC PRESERVATION

A. HPB/HAC Appointments/Discussion of Alternate Members

Ms. Plummer reviewed the highlights of the HAC meeting on October 18, 2011 which included but was not limited to work on a presentation of plaques (i.e. Grand re-opening of the Mound House); work on a local program to designate historical properties; criteria for property owners regarding historical designation; vista signage to designate a historical area or building and she noted the Committee wanted to start with Old San Carlos by the fountain or the pier; and consideration for a walking tour. She noted in the agenda packet was information from the Estero Island Historical Society about the tour at the school, monthly events, and a membership form. She discussed the "Visions of the Past" event which was held on October 29, 2011 at the Matanzas Pass Preserve, and suggested if the Town could put on

their website these types of functions for better promotion of the events. She discussed attendance at the HAC meetings by the members, and she asked if Mr. Zuba and Mr. Van Duzer would like to maintain their status on the HAC.

Mr. Zuba and Mr. Van Duzer responded in the negative.

Ms. Shamp stated she would try to attend the meetings when her schedule permits.

Discussion was held regarding LPA members attending HAC meetings.

Community Development Director Fluegel reported that the HAC did not have to meet every month, and they could meet every other month.

Ms. Plummer reported the HAC would not meet in December.

Discussion was held concerning the composition of the HAC membership.

MOTION: Mr. Van Duzer moved that they add to the HAC Ms. Shamp, and Mr. Durrett as an alternate, and remove Mr. Zuba and Mr. Van Duzer; second by Ms. Shamp.

VOTE: Motion passed, 7-0.

Discussion was held regarding historical plaques.

MOTION: Mr. Van Duzer moved to adjourn the HPB at 12:07 p.m. and reconvene as the LPA; second by Mr. Zuba.

VOTE: 7-0.

**HISTORIC PRESERVATION BOARD ADJOURNED AND RECONVENED AS THE LOCAL
PLANNING AGENCY
12:08 P.M.**

VII. LPA MEMBER ITEMS AND REPORTS

Mr. Smith – no items or reports.

Mr. Kakatsch – no items or reports.

Mr. Durrett – no items or reports.

Ms. Shamp - questioned the COP, but noted it could be discussed on the Action Report. She also questioned the status of the north end Renourishment Project.

Community Development Director Fluegel reported it seemed to be going well and moving along. He added there was one property where they had to go around and create a pond; and he noted it would take time to fill in. He stated they were getting close to the Edison Beach House property.

Mr. Zuba – asked for an update on Seafarer's.

Community Development Director Fluegel reported the Town was waiting to hear from Seafarer's; Town and County staff met on this topic; and it appeared they intended to do a surface parking lot.

Discussion ensued regarding Seafarer's; and traffic issues.

Mr. Van Duzer – announced his resignation from the LPA as of January 1, 2012 since he would be relocating to Marathon, Florida.

Ms. Plummer – noted that Mr. Van Duzer should be honored at the December meeting.

Ms. Shamp requested an LPA ornament for the Town Christmas tree.

Mr. Smith accepted the responsibility for the LPA ornament.

VIII. LPA ATTORNEY ITEMS

LPA Attorney Miller recounted her years of knowing and working with Mr. Van Duzer, and noted he would be missed.

IX. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Community Development Director Fluegel – discussed the Carlton Ryffel Resolution and he reported he spoke with Mr. Ryffel's family who like the idea of a flagpole dedication at Crescent Beach Family Park.

Mr. Kakatsch noted that Mayor Kiker had worked hard on the Estero Boulevard repaving and he noted the funds used to enhance the turn-offs were a plus for the Town. He hoped this program would keep going until such time that the south end of the beach looked like the north end.

Community Development Director Fluegel – reported that staff received a resubmittal from Lee County for the Ebb Tide Project on San Carlos Island; and staff provided some initial response to the County and pointed out two areas of concern which was the traffic study and the proposed height limit.

X. LPA/HPB ACTION ITEM LIST REVIEW & ITEMS FOR NEXT MONTH'S AGENDA

Ms. Shamp reviewed the LPA/HPB Action List –

- Surf Club – Presented Council and approved
- Personal watercraft – no representation needed
- Connecticut Street – TBD

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- La Ola Restaurant – Presented to Council and approved
- Diamondhead Sign – Presented to Council and approved

Ms. Shamp noted that Future Work Activities listed; and questioned the COP in the EC.

Community Development Director Fluegel reported the COP would be a work draft and workshop with a date of December 13, 2011.

Ms. Shamp questioned the beach raking and sign ordinances.

Community Development Director Fluegel reported the sign ordinance be on a workshop with Council on December 5, 2011, and then on the Regular Meeting of December 21, 2011. He added that beach raking was to be determined.

Mr. Kakatsch stated he would represent the LPA at the December 21st Council Meeting regarding the sign ordinance.

XI. PUBLIC COMMENT

No comment.

XII. ADJOURNMENT

MOTION: Motion by Mr. Van Duzer, seconded by Ms. Plummer to adjourn.

VOTE: Motion approved, 7-0.

Meeting adjourned at 12:37 p.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Signature

- End of document.

RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE
TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2011-16
AMENDMENT TO BEACH RAKING AND WRACK LINE POLICY
ARTICLE I OF CHAPTER 14
TOWN LAND DEVELOPMENT CODE

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the Local Planning Agency (LPA) is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto and performing such other reviews as are requested by the Town Council; and

WHEREAS, following proper notice and as required under Florida Statute and the LDC, the LPA conducted a public hearing on November 8, 2011 to consider a proposed Town Ordinance, which is attached hereto as Exhibit A and is hereby incorporated by reference; and

WHEREAS, the aforesaid Ordinance, if passed, would amend the regulation of personal watercraft and parasailing businesses within Town municipal limits, as is more fully set forth in the draft Ordinance; and

NOW THEREFORE BE IT RESOLVED, that the LPA recommends that Town Council approve and adopt the proposed Town Ordinance to amend the Section 14-6, Beach raking and wrack line policy of, Article I Beach and Dune Management, of Chapter 14 of the Town Land Development Code and recommends the following findings of fact and conclusions with regard thereto:

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The proposed amendments are in the best interests of the health, safety and welfare of the citizens, residents, visitors, and business owners of the Town of Fort Myers Beach and the LPA hereby recommends that the Town Council adopt the proposed amendments to the Land Development Code. .

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Bill Van Duzer and seconded by LPA Member John Kakatsch and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair
John Kakatsch
Bill Van Duzer
Al Durrett

nay
nay
aye
aye

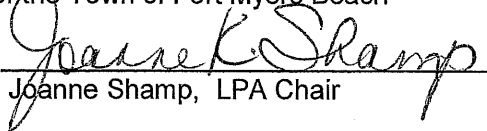
Hank Zuba, Vice Chair
Jane Plummer
Alan Smith

aye
aye
aye

DULY PASSED AND ADOPTED THIS 8th day of November 2011.

LPA of the Town of Fort Myers Beach

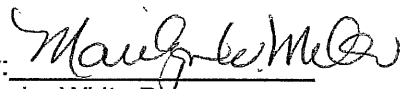
By:


Joanne Shamp, LPA Chair

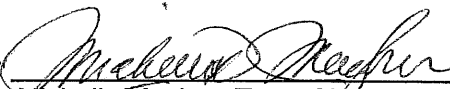
Approved as to legal sufficiency:

ATTEST:

By:


Fowler White Boggs
LPA Attorney

By:


Michelle Mayher, Town Clerk

Town of Fort Myers Beach
ORDINANCE NO. 11-

AN ORDINANCE AMENDING CHAPTER 14 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE--ENVIRONMENT AND NATURAL RESOURCES; AMENDING SECTION 14-1, DEFINITIONS AND SECTION 14-6, BEACH RAKING AND WRACK LINE POLICY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. Section 14-1 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 14-1. Definitions.

For purposes of this article, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used, in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word "shall" is always mandatory.

Beach means that area of sand along the gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

Beach furniture or equipment means any man-made apparatus or paraphernalia designed or manufactured for use or actually used on the beach or in the adjacent tidal waters. Examples include chairs, tables, cabanas, lounges, umbrellas, sailing vessels up to 16 feet in length, personal watercraft, concession storage units, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables, tents, and bicycles.

Beach width means the perpendicular distance measured from the edge of wet sand to the place where there is a marked change in material or physiographic form from beach sand to dune vegetation, seawall, turf grass, etc.

Director means the person to whom the town manager has delegated the authority to administer this article, or that person's designee.

Dune means a mound, bluff, ridge, or emergent zone of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by any natural or artificial mechanism, which may be bare or covered with vegetation, and is subject to fluctuations in configuration and location (reference 161.54 F.S., 62B-33.002 F.A.C.). It encompasses those ecological zones that, when left undisturbed, will support dune vegetation. As to areas restored or renourished pursuant to a permit issued by the town or state, it encompasses the area specified in the permit as a dune or any area specified as suitable for establishment of dune vegetation.

Dune vegetation means pioneer species of native vegetation which, if left undisturbed by manmade forces, will begin to grow on a dune, including species such as bitter panicum, coastal panic grass, crowfoot grass, saltmeadow cordgrass, sandbur, seacoast bluestem, sea oats, seashore saltgrass, stiffleaf eustachys, beach bean, blanket flower, dune sunflower, fiddle-leaf morningglory, partridge pea, railroad vine, sea purslane, beach creeper, nicker bean, coin vine, inkberry, lantana, saw palmetto, seashore elder, baycedar, green buttonwood, cabbage palm, cocoplum, seagrape, and southern wax myrtle.

Edge of wet sand means the point where the visible darkening or staining of the beach sand from wave action is no longer detectable.

Hand raking means the use of a standard garden rake, pitchfork, potato fork, or any other handheld tool used for the purpose of removing or altering the "wrack line."

Mechanical beach raking means ~~the cleaning of the sandy beach seaward of the dune and vegetation line of trash and other debris on or near the surface by use of a rake or other similar porous device which penetrates no more than 2 inches below existing ambient grade and results in no removal of in situ sand.~~ a method of maintaining the beach by pulling a pronged rake or a piece of chain link fence that meets the requirements of the LDC Sec. 14-6 (c). The rake or chain link fence may be pulled behind a tractor, golf cart, ATV, or other vehicle, as approved by the town, that meets the maximum ground-to-tire pressure found in LDC Sec. 14-6(c).

Seaward line of vegetation means the location closest to the mean high water line containing, or suitable for, dune vegetation. If there is no such vegetation upon a parcel or portion of a parcel, it shall encompass a line alongshore projected from the closest areas on each side where such vegetation does exist.

Wet sand means the area on the beach where the sand is saturated by sea water from wave action. This area is identified by a visible darkening or staining of the beach sand from the water driven onshore by wave action.

Wrack line means a well defined zone of the natural organic marine material cast on the shore by the last high tide, including seaweed and other vegetative and animal debris, but excluding manmade material. Any areas of organic marine material left on the upper beach due to abnormally high spring tides, storm tides, or other extreme conditions or events, as determined by the town, are not included in the definition of "wrack line."

Section 2. Section 14-6 of the Town of Fort Myers Beach Land Development Code is hereby amended as follows:

Sec. 14-6. Beach raking and wrack line policy.

(a) The use of boxblades on the beach or dune is prohibited. In an emergency and/or storm event resulting in a build-up of sand against seawalls, the use of a boxblade may be allowed with the approval of DEP, where required, and upon filing that approval with the town manager and meeting any other requirements set by the town.

(b) Under normal circumstances, the raking of the wrack line is prohibited. No mechanical or hand raking may take place seaward of the wrack line or within ten feet (10') landward of the wrack line, provided, however that hand raking of the wrack line may be performed anytime to ameliorate hazardous conditions such as removal of sand castles or filling in of manmade holes on the beach. The town manager may approve the raking of the wrack line conditioned upon prior approval by the DEP if it is determined that excessive accumulation of natural or other debris caused by extreme events, including, but not limited to, red tide, red algae bloom, or storm carried debris, are present. Should such excessive accumulation be determined, the town manager may approve raking consistent with the authorization given by DEP. Any such raking which will result in the unreimbursed expenditure of town funds in excess of currently budgeted funds shall first be approved by the town council. If this occurs during sea turtle season (May 1 through October 31), the raking must be in compliance with the specific conditions in § 14-6(c)(4).

(c) Any mechanical beach raking other than town-initiated raking pursuant to subsection (b) above requires a permit from the town:

(1) Application for permit to mechanically rake an unvegetated portion of the beach shall be submitted to the director or their designee, in writing, on a form provided by the director. as part of this application, a site plan will be submitted depicting the property corners as represented by aerial photography available at the Lee County Property Appraiser's website (www.leepa.org), the dimensions of the area to be raked, and the location of existing vegetation and structures.

(2) The application shall be made by the owner of the business that conducts the raking, or by the property owner or authorized agent of the property owner. Any application by a raking business must attach a current copy of the Lee County business tax receipt for such business and a letter of authorization from the property owner.

(3) Any business that conducts mechanical beach raking shall be required to carry \$1,000,000 in liability insurance and name the Town of Fort Myers Beach as additionally insured. Mechanical beach raking conducted by a property owner or a condominium on their own property only is exempt from their requirement to carry liability insurance.

(4) Any business that conducts mechanical raking shall require all operators to attend an educational and training session developed by the Town at least once every year. The education and training session shall address topics such as dune vegetation, sea turtles, and beach-nesting birds. All operators of the beach business and the business owner shall sign a form acknowledging that they understand and will abide by the Town's raking regulations.

(5) Prior to the granting or denying of the application, the director or their designee will conduct an on-site inspection to determine if the proposed raking

conforms to the requirements of this article and if any native vegetation exists to be protected.

(3) (6) Based upon the information contained in the application and the site inspection, the director shall approve or deny the application.

(7) A single permit may be issued to a business that conducts raking on multiple properties. A site permit for any newly-contracted properties must be added to the permit of any business that rakes multiple properties.

(8) A restricted beach vehicle permit will also be issued with the mechanical beach raking permit provided that the vehicle meets the maximum ground-to-tire pressure found in LDC Sec. 14-6(c).

(4) (9) The director shall attach site specific conditions to the permit relating to identifying, designating, and protecting that existing vegetation and other natural features which are not to be removed in accordance with this ordinance. These conditions are in addition to the following standard permit conditions for all mechanical beach raking permits:

a. During the sea turtle nesting season (May 1 through October 31), mechanical beach raking activities shall be confined to daylight hours and shall not begin before 9:00 A.M. or before the completion of daily monitoring for turtle nesting activity by a the Florida Fish and Wildlife Conservation Commission (FWC) authorized marine turtle permit holder, whichever occurs first (see requirements in § 14-78(b)). During the rest of the year (November 1 through April 30), mechanical beach raking may be conducted at night (sunset to sunrise) only with sufficient lighting on vehicles. The lighting levels must be approved by Town staff by an inspection of the field at night. All fixtures should be shielded to focus light only onto the direct work area. Red lights or red filters shall be used to reduce disturbance to wildlife such as shorebirds.

b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted beach raking area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any mechanical beach raking. the sea turtle survey, protection and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. rule 68-E Permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.

c. All turtle nests will be marked with wooden stakes, flagging tape, and an FWC sea turtle nest sign. No mechanical raking equipment is allowed inside of the staked area. All equipment operators shall be briefed on the types of marking utilized and should be able to easily contact the individual responsible for the nest survey to verify any questionable areas.

d. Mechanical beach raking equipment shall meet the following standards:

1. The vehicle and equipment cannot exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the following formula;

-a- $PSI = \text{vehicle weight in pounds (includes person and equipment)} \div \text{the footprint in square inches}$

-b- EXAMPLE: 404 lbs. (ATV weight) + 200 (person + equipment) divided by 198 square inches (ATV with 6" x 8.25" footprint x 4 tires) = 3.1 PSI

2. Raking shall be accomplished with a pronged rake that limits penetration into the surface of the beach to a maximum of two inches. Box blades, front- or rear-mounted blades, or other sand sifting/filtering vehicles are not allowed. A piece of chain link fence or pressure treated lumber not to exceed two pieces 4" by 4" by 10' in size may be pulled behind the rake.

3. The beach raking vehicle and equipment must be removed from the beach when not in use.

4. Beach raking equipment shall be inspected periodically by the town to insure compliance with these standards.

5. Operators of mechanical beach raking equipment shall avoid all native salt-tolerant dune vegetation and staked sea turtle nests by a minimum of 10 feet.

6. Mechanical beach raking equipment must travel seaward of the mean high water line with the rake disengaged when driving on the beach from one raking area to another, and shall not disturb any dune or dune vegetation.

e. Burial or storage of any debris (biotic or abiotic) collected is prohibited seaward of any frontal dune, vegetation line, or armoring structure. Removal of all accumulated material from the beach must occur immediately after raking has been performed in an area. Prior to removing the debris and to the greatest extent possible, beach compatible sand should be separated from the debris and kept on site.

f. All permit fees collected for mechanical beach raking permits shall be used only for environmental education and restoration.

g. Any violation of the any special or standard permit conditions by a business owner, operator, or property owner shall automatically invalidate may result in revocation of the permit for a particular property and/or for the entire permitted area. Revocation of a permit shall not prevent the Town from pursuing any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of Chapter 2) for any violation of the article. Permit revocations may be appealed to the town Manager. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ordinance.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

Section 4. Effective Date. This Ordinance shall be effective immediately upon adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor
Bob Raymond, Vice Mayor
Joe Kosinski

Alan Mandel
Jo List

DULY PASSED AND ENACTED by the Council of the Town of Fort Myers Beach,
Florida, this ____ day of _____, 2011.

ATTEST:

TOWN OF FORT MYERS BEACH

BY: _____
Michelle D. Mayher, Town Clerk

BY: _____
Larry Kiker, Mayor

Approved as to legal sufficiency by:

Fowler White Boggs, Town Attorney

**FORT MYERS BEACH, FLORIDA
DEPARTMENT OF COMMUNITY DEVELOPMENT
ORDINANCE STAFF REPORT**

LAND DEVELOPMENT CODE SECTION: Chapter 14 Environmental and Natural Resources, Article I- Beach and Dune Management, Section 14-6 Beach raking and wrack line policy

LPA HEARING DATE: November 8, 2011

LPA HEARING TIME: 9:00am

I. SUMMARY:

The proposed changes to the Beach raking and wrack line policy of the Land Development Code are to clarify definitions, permit requirements, time of day and year raking may occur, enforcement, and insurance requirements in Chapter 14 Article I.

II. BACKGROUND AND ANALYSIS

History of Public Hearings:

The Marine Resources Task Force began review of proposed changes to the beach raking and wrack line policy in March of 2009 and approved a final version to submit to LPA in fall of 2010. The LPA conducted a public hearing in January of 2011 for the proposed changes and rejected to 6-0 and voted to send it back to Marine Resources Task Force (MRTF) for changes. MRTF reviewed the raking and wrack line policy in March and approved additional changes in April of 2011.

Background:

The proposed changes to the beach raking are designed to better enable Town staff to issue permits for raking and to determine compliance with those permits.

In 2008, Town Environmental Sciences (ES) staff was directed by the Community Development Director to begin issuing beach raking permits in accordance with § 14-6 (c). There is little if any evidence of Town staff actually ever issuing permits for beach raking under § 14-6 (c). After reviewing § 14-6 and evaluating current business practices, ES staff and Dr. Frank Shockey determined that in order to effectively implement the permitting program the LDC should be modified for clarity. In order to

assist staff with the development of any proposed changes to Chapter 14 and to elicit input, staff brought the issue to the Marine Resources Task Force in March of 2009. After over a year of discussion, MRTF approved the proposed changes in fall of 2010. The Town Attorney has reviewed the proposed language and approved it after minor changes. The primary reasons for the modifications are:

- 1) To clarify the definition of the wrack line, hand raking, and mechanical beach raking
- 2) To prohibit raking practices which may negatively affect wrack,
- 3) to allow filling in of man-made holes in the wrack line and removal of sand castles
- 4) To clarify permit application requirements
- 5) To allow for a single mechanical back raker to work on several properties under a single permit and to define their requirements,
- 6) To require businesses that conduct mechanical beach raking to carry liability insurance and name the Town as additionally insured
- 7) Require businesses that conduct mechanical beach raking to attend educational and training sessions once per year
- 8) Define what time of day that mechanical beach rakers may operate, and allow raking at night outside of sea turtle nesting season with sufficient lighting
- 9) To clarify enforcement mechanisms.

Also proposed for LPA approval is an application to conduct mechanical beach raking. This was developed by MRTF and it addresses all the required elements of § 14-6 (c).

Finally, consideration should be given as to the permit fee. MRTF discussed this and recommended permit fee of \$25.00 per property to offset staff time for permit application, compliance inspections, and enforcement efforts.

Compliance with the Comprehensive Plan:

Nothing in the proposed amendment conflict with any of the policies or objectives in the Comprehensive Plan. Beach raking is mentioned specifically or by reference in several sections.

Policy 6-C-5 states: SEA TURTLES – *The town shall prepare and adopt a new sea turtle ordinance by the end of 1998 to supersede Lee County's existing Sea Turtle Protection Ordinance. The new ordinance shall provide standards for coastal uses and development and shall prohibit, during sea turtle nesting season, any point source of light or any reflective surface of a light fixture being visible from the beach; also, areas seaward of a frontal dune must not be directly,*

indirectly, or cumulatively illuminated. Other beach activities to be regulated include:

- i. Beach raking, scraping, and other activities that unnecessarily compact the sand and/or damage dunes or prevent the re-creation of dunes;*
- ii. Unauthorized vehicular traffic on the beach;*

Since these amendments clarify existing beach raking regulations, the proposed amendments comply with the Comprehensive Plan. However, it should be noted that there is a factual error in this language in “i”. Beach raking by its nature actually does not compact sand but rather reduces compaction of the beach sand and rearranging particles and increasing pore space between them through the penetration of the tines.

Beach raking is also mentioned in the narrative section of the Conservation Element on page 6-15 with regard to an overall discussion of sea turtles.

Despite national and international protective legislation, sea turtle populations have suffered worldwide decline, primarily as a result of human interference. Some causes include:

- mechanical beach raking and beach driving;*

The precautions taken in Land Development Code section 14-6 (c) (4) however provide protection for sea turtles and greatly reduce the possibility for human interference since all beach rakers must coordinate their activities with the FWC authorized marine turtle permit holder (Turtle Time, Inc.) and must not rake within 10’ of a marked sea turtle nest. The proposed amendments will not have any additional impact to nesting sea turtles.

Analysis:

The first proposed change is to Sec. 14-1 to remove include and clarify definitions. The previous definitions did not include hand raking or mechanical beach raking. These definitions are critical for full implementation of Section 14-6. Previously the only definition was of “wrack” and vague and did not account for natural events which may cast wrack further on the beach than normal. These changes will greatly clarify how other portions of Section 14-6 are implemented. The current definition of wrack was not adequate to define its character and location. The proposed changes clearly define what it is (typically a line) and its character. The proposed language also is more scientifically accurate. The current wrack line policy also did not allow trash and dangerous natural

object to be removed and did not define a distance up to which raking could occur near a wrack line.

Wrack consists of seagrass and marine algae mixed with shells, sand dollars, starfish, tiny shrimp, driftwood, sponges, coral, and other biotics that have drifted at sea before washing ashore, especially after storms. Man made materials and trash also can be mixed in with the wrack line. Wrack is also host to invertebrates such which serve as food for many creatures such as migrating shorebirds. Wrack also is critical to the health of the dunes by providing plant nutrients and stabilizing windblown sand.

Hand raking means the use of a standard garden rake, pitchfork, potato fork, or any other handheld tool used for the purpose of removing or altering the "wrack line".

Mechanical beach raking means a method of maintaining the beach by pulling a pronged rake or a piece of chain link fence that meets the requirements of the LDC Sec. 14-6 (c). The rake or chain link fence may be pulled behind a tractor, golf cart, ATV, or other vehicle as approved by the town that meets the maximum ground-to-tire pressure found in LDC Sec. 14-6 (c).

Wrack line means a well defined zone of the natural organic marine material cast on the shore by the last high tide, including seaweed and other vegetative and animal debris, but excluding manmade material. Any areas of organic marine material left on the upper beach due to abnormally high spring tides, storm tides, or other extreme conditions or events, as determined by the Town, are not included in the definition of "wrack line."

The second change is to provide for protection of the wrack line while allowing for other portions of the beach that fall outside of this defined zone to be raked. This change also allows filling of holes which may cause injury to beach goers.

(b) Under normal circumstances, the raking of the wrack line is prohibited. No mechanical or hand raking may take place seaward of the wrack line or within ten feet (10') landward of the wrack line except under the following provision: hand raking of the wrack line may be performed anytime to ameliorate hazardous condition; examples of this being removal of sand castles or filling in of man-made holes on the beach.

The next set of changes is to clarify what is necessary to apply for a beach raking permit. The Florida Department of Environmental Protection (DEP) also requires a permit to conduct beach raking. However, DEP staff

acknowledges that there are several beach raking operators and businesses working on Fort Myers Beach currently that do not have permits and DEP have not been able to either contact the operator and initiate enforcement action due to lack of staff. DEP only has one beach permitting staff person for Collier, Lee, and Charlotte counties and DEP only has one enforcement staff for the entire state. There have also been recent discussions by DEP staff that many environmental protection rules may be relaxed or eliminated including the requirement for permits for beach raking. If this were to happen and the Town has no permit requirement then the Town would not have any ability to standardize beach raking operations and thus greatly reduce our stewardship of our beaches.

This change also allows for business to conduct beach raking on multiple properties. It appears the way the original language was written it did not contemplate beach raking businesses. This change will clarify that raking may be performed by an individual property owner or a business. Currently, several operators work on multiple properties however, the current LDC is silent as to whether the permit application is made by the property owner or an operator. The current LDC language at the least would require an operator to make an application for every property that they rake or would require the property owner to make the application. The proposed language would allow an operator to make a single combined application for all properties. Modifying the LDC to allow mechanical beach rakers to work on several properties would streamline permitting and compliance by minimizing (but not capping) the total number of permit holders. It would also allow staff to work more efficiently with the industry to facilitate greater education and communication with the regulated community. Essentially, it reduces the number of points of contact between staff and rakers. The language also allows for new properties to be added onto an existing permit.

This change also requires mechanical beach raking businesses to carry liability insurance and name the Town on that policy. This is a new requirement and greatly reduces Town liability for any accidents. Subsection (4) establishes a new requirement for beach raking businesses to attend a Town held educational session that covers topics such as dune vegetation, sea turtles and beach nesting birds. A requirement for an educational session is a proactive measure to assure continued stewardship of natural resources. Subsection (8) streamlines permitting by allowing issuance of a restricted beach vehicle permit at the time that the beach raking permit is issued as long as it meets the ground pressure requirements.

(c) Any mechanical beach raking requires a permit from the town:

(1) Application for a permit to mechanically rake an unvegetated portion of the beach shall be submitted to the director, in writing, on a form provided by the director or their designee. As part of this application, a site plan will be submitted depicting the property corners as represented by aerial photography available at the Lee County Property Appraiser's website (www.leepa.org), the dimensions of the area to be raked, and the location of existing vegetation and structures.

(2) The application shall be made by the owner of the business that conducts the raking, or by the property owner or authorized agent of the property owner. Any application by a raking business must attach a current copy of the Lee County business tax receipt for such business and a letter of authorization from the property owner.

(3) Any business that conducts mechanical beach raking shall be required to carry \$1,000,000 in liability insurance and name the town of Fort Myers Beach as additionally insured. Mechanical beach raking conducted by a property owner or a condominium on their own property only is exempt from their requirement to carry liability insurance.

(4) Any business that conducts mechanical raking shall require all operators to attend an educational and training session developed by the Town at least once every year. The education and training session shall address topics such as dune vegetation, sea turtles, and beach-nesting birds. All operators of the beach business and the business owner shall sign a form acknowledging that they understand and will abide by the Town's raking regulations.

(2)(5) Prior to granting or denying the application, the director or their designee will conduct an onsite inspection to determine if the proposed raking conforms to the requirements of this article and if any native vegetation exists to be protected.

(3) (6) Based upon the information contained in the application, the site inspection, and any other facts relevant to the standards in this chapter, the director shall approve or deny the application.

(7) A single permit may be issued to a business that conducts raking on multiple properties. A site permit for any newly-contracted properties must be added to the permit of any business that rakes multiple properties.

(8) A restricted beach vehicle permit will also be issued with the mechanical beach raking permit provided that the vehicle meets the maximum ground-to-tire pressure found in LDC Sec. 14-6 (c).

The next change allows beach rakers to work at night outside of sea turtle nesting season with sufficient lighting that is of such a wavelength to reduce disturbance to wildlife such as endangered migratory shorebirds that are very common to the beach between November 1 and April 30.

a. During the sea turtle nesting season (May 1 through October 31), mechanical beach raking activities shall be confined to daylight hours and shall not begin before 9:00 A.M. or before completion of daily monitoring for turtle nesting activity by the Florida Fish and Wildlife Conservation Commission (FWC) - authorized marine turtle permit holder, whichever occurs first (see requirements in § 14-78(b)), During the rest of the year (November 1 through April 30), mechanical beach raking may be conducted at night (sunset to sunrise) only with sufficient lighting on vehicles. The lighting levels must be approved by Town staff by an inspection in the field at night. All fixtures should be shielded to focus light only onto the direct work area. Red lights or red filters shall used to reduce disturbance to wildlife such as shorebirds.

Finally the changes in Subsection (9) (e) requires that all permit fees are used for environmental education and restoration. Subsection (9) (f) simply clarifies enforcement which allows for the code enforcement process. This process will allow the Town to revoke a mechanical beach raking business's ability to work on one particular property after a violation but not necessarily revoke the businesses permit for all properties. The code enforcement process also allows for a public code enforcement hearing and a finding of fact that there has been a violation before a fine can be assessed.

f. All permit fees collected for mechanical beach raking permits shall be used only for environmental education and restoration.

g. Any violation of the any special or standard permit conditions by a business owner, operator, or property owner shall automatically invalidate may result in revocation of the permit for a particular property and/or for the entire permitted area. Revocation of a permit shall not prevent the Town from pursuing any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of Chapter 2) for any violation of the article. Permit revocations may be appealed to the town Manager. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ordinance.

III. RECOMMENDATION

Staff recommends **APPROVAL** of these proposed changes. These changes will existing beach regulations and implement new regulations that will offer the Town the ability to exercise greater stewardship of the Town's natural resources on our beaches.

Exhibits:

"A" - Proposed amendments to Chapter 14
"B" - MRTF March 2011 meeting minutes

**MINUTES
FORT MYERS BEACH
Marine Resources Task Force**

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Wednesday, April 13, 2011

I. CALL TO ORDER

Meeting was called to order at 10:32 AM by Chairperson Mr. Werner. Other members present:

Dan Andre
Roger Johnson-excused
Al Durrett
Julie Schwab-excused
Dennis Kovach

Staff: Keith Laakkonen, Environmental Services Coordinator
Leslee Chapman, Zoning Coordinator

II. PLEDGE OF ALLEGIANCE

After the pledge, Mr. Werner recognized and welcomed Mr. Kosinski of Council who will be the liaison to MRTF.

III. REVIEW OF MINUTES OF MARCH 2011

Motion: Mr. Andre moved to approve the minutes with minor edits.

Seconded by Mr. Kovach;

Vote: Motion passed 4-0.

IV. PUBLIC COMMENT

Mr. Bill Perry addressed the meeting and stated that he read the draft of the beach raking ordinance that was sent and he supports it.

Mr. Carleton Ryffel addressed the meeting next and said that these regulations are unnecessary. He also said that the wrack line is important but it is something that changes constantly and he is opposed to the general notion of this.

V. CURRENT ITEMS

A. Beach Raking Ordinance Review-Mr. Laakkonen

Mr. Laakkonen gave definitions and referred to the edited draft, pointing out the changes that were suggested by MRTF at the last meeting. Mr. Werner opened the

MRTF-20110413

floor for discussion.

Mr. Andre asked about a permit fee, which Mr. Laakkonen said would be determined by Council.

Mr. Kovach said he is still "deeply troubled" about Section 14-1 b from a safety standpoint of pedestrians in the wrack area. He presented photos of the holes in the sand said he wants to add a part to the draft where it talks about "no mechanical or hand raking may take place..." to read "except under the following provisions: 1: hand raking of the wrack line may be performed anytime to ameliorate hazardous conditions; examples of this being removal of sand castles or filling in of holes in the beach." He feels this is needed for safety and does not impact the raking efforts in any way.

Mr. Laakkonen said that dealing with filling in holes is not prohibited by this or any ordinance but said there needs to be more discussion about how they want to proceed with this issue. Some members feel that this should be addressed through education rather than by ordinance. More discussion took place about this being addressed in the code. Mr. Laakkonen reported for the record that there had been a report that there was pumping of water into the Critical Wildlife area, which is a violation of the county's "MS4," the Army Corps of Engineers rules, and DEP rules. He said that this is because the sedimentation causes fill in a wetland area but there haven't been any reports of health issues due to standing water on the beach. He said by the time he got to the scene of this violation, it had been abated.

Mr. Durrett agreed that specifically stating that filling in holes is permitted will make that clear to all. Mr. Laakkonen said they will need to articulate that into the draft.

Motion: Mr. Werner asked for a motion to approve the LDC raking changes as submitted.

This motion failed.

Motion: Mr. Kovach moved to approve the LDC raking change with the following addition under Section B, "except under the following provisions: hand raking of the wrack line may be performed anytime to ameliorate hazardous conditions; examples of this being removal of sand castles or filling in of man-made holes in the beach."

There was discussion about holes at the wrack line and then this motion failed for inappropriate language.

Motion: Mr. Andre moved to approve the changes to raking with the addition of the following sentence: the filling in of any man-made hole is permitted" to Section B.

Seconded by ~~Mr. Werner~~ DENNIS KOVACH

Vote: Motion passed 3-1, with Mr. Werner opposing.

The permit fee suggested by staff is \$25.00, to cover processing by the Town. Discussion took place about the fees and how they apply to each parcel.

B. Recycling Bins at Beach Accesses-Mr. Andre

Mr. Andre said that there is nothing to report at this time as this is the last of the 6 month test program and there should be a record available for May. Ms. Lewis will address MRTF next month with the information.

C. Adopt a Beach Program-Mr. Andre

Mr. Andre said he has been looking at many of these programs around the country and has come up with 5 main areas that need to be considered if they want to do this. Designated areas would need to be adopted with some type of signage. Agreements and guidelines would be needed along with "Release and Hold Harmless" letters and decisions as to what would be supplied to the sponsors. This would be done mostly at the beach accesses for now.

D. Distribution Plan for Sea Grass Guide-update Mr. Durrett

Mr. Durrett said they have handed out a lot of brochures.

E. Publicizing the Need to Dredge New and Big Carlos Passes

Mr. Laakkonen had checked into this and reported that there is nothing planned for this as of yet by the county but the Town is starting to gather information for dealing with the state on this. Discussion ensued regarding funding, plans, etc.

F. Mobile Educational Outreach Displays for Special Events-Mr. Werner

Mr. Werner said that this is Julie Schwab's area and she has been excused. Mr. Durrett said there is a seafood festival at Santini Plaza coming up and it would be a perfect place for this. Mr. Andre asked if they have any banners, etc. to do this but the members agreed that there is not enough time to do this right now.

VI. NEW ITEMS

A. MRTF Meeting Times

Mr. Werner said that traditionally the meetings have been at 6:00 PM but last year, at member request, the times were changed to 10:30 AM to avoid the traffic but now they are going to return to the evenings, unless they vote otherwise. Members decided to go back to 6:00 PM meetings for now.

B. Experimental Project to Open the CWA Channel

Mr. Werner commented that he is opposed to anything that would alter the natural state of this area, adding that fish kills are a natural part of this.

Mr. Kovach gave a brief history of this area and said that there is no one really keeping an eye on this. The county has had a surveyor record the legal boundaries of the area but now the Town does not really take care of this area. He said that there is a building of some type there now and he feels it shouldn't be there. He said he spoke to the state and their suggestion was to come up with a proposal that includes

cleaning up any mess from fish kills, etc. and submit it to them for approval. He asked Mr. Laakkonen if the Town is contemplating vegetation mitigation at the south end of the CWA so certain birds would be encouraged to return. He replied that this is the plan and clarified that they are trying to identify a lead manager.

Mr. Laakkonen said he has been in contact with the sheriff's department about the structure on the property and they have agreed to check it. He will also contact Fish and Wildlife about it. In addition, he is working with Lee County about the Holiday Inn sign and others to stay on top of these hazardous signs.

VII. MEMBERS ITEMS AND REPORTS

Mr. Andre reminded Mr. Laakkonen about the proposal for the live shelling and suggested adding waterproof rack holders to the "dos and don'ts" at the beach.

Mr. Durrett reported that the DEP may be eliminated and funding extremely cut. He wonders if the Town is prepared to take over the things that would still need to be done. Mr. Laakkonen expanded on the funding cuts and said that it would be a policy discussion with Council. Mr. Durrett said that MRTF needs to be prepared and step up to take on responsibility for Estero Bay.

VIII. PUBLIC COMMENT

Mr. Perry talked a bit about the holes on the beach, at the wrack line, and said that he personally fills in these holes with minimal impact to the wrack line. He suggested that mechanical raking should be added to this section.

IX. AGENDA FOR THE NEXT MEETING

Next meeting is May 11 2011.

- Recycling Bins at Beach Accesses-presentation by Ms. Lewis
- Adopt a Beach Program-Mr. Andre
- Update on DEP status-Mr. Laakkonen
- Discuss racks for education material at beach accesses

X. ADJOURNMENT

Meeting adjourned at 11:53 AM.

Adopted 5/11/11 with/without changes. Motion by DAN ANDRE
(DATE)

Vote: 7-0 Signature: Jeff Wynn

- End of document